

January 9, 2018

Attachment 4

WATER POLICY INTERIM COMMITTEE 2017-18 ROLL CALL VOTE

Date: January 9, 2018

Name	Aye	Nay
Rep. Zach Brown	✓	
Sen. Jill Cohenour		✓
Sen. Jon Sesso		✓
Sen. Jeffrey Welborn	<u>excused</u>	
Rep. Bob Brown	✓	
Rep. Carl Glimm	✓	
Rep. John Fleming		✓
Sen. Pat Connell	✓	

Motion: Continue objection to proposed rules relating
to DN~~R~~^R water right permitting defining combined
appropriation

P = Proxy



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Water Policy Interim Committee

65th Montana Legislature

SENATE MEMBERS
PAT CONNELL--Chair
JILL COHENOUR
JON SESSO
JEFFREY WELBORN

HOUSE MEMBERS
ZACH BROWN--Vice Chair
BOB BROWN
JOHN FLEMING
CARL GLIMM

COMMITTEE STAFF
JASON MOHR, Lead Staff
NADINE SPENCER, Secretary
ERIN BILLS, Legal Staff

January 9, 2018

Director John Tubbs
Department of Natural Resources and Conservation

by Intraoffice Mail

Dear Director Tubbs:

Pursuant to 85-2-105(2)(b), MCA, the Water Policy Interim Committee (WPIC) reviewed MAR Notice No. 36-22-196 relating to the Department's proposed rules pertaining to water right permitting, specifically the amendment to 36.12.101(13) defining "combined appropriation." After careful consideration, a majority of the members of the WPIC notified the WPIC's presiding officer on October 10, 2017, that they objected to the notice of proposed rulemaking in order to address the proposed rule at the WPIC's next committee meeting. On January 9, 2018, the Committee renewed its objection to MAR Notice No. 36-22-196, and the Committee intends to address the proposed rule at its next meeting, currently scheduled for March 5, 2018. This letter constitutes notice to the Department that the WPIC objected to MAR Notice No. 36-22-196 pursuant to 2-4-305(9), MCA, of the Montana Administrative Procedure Act. A copy of this notification is included in the WPIC's records.

The effect of the WPIC's objection is that following the receipt of this notice by the Department, the proposed rule may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published.

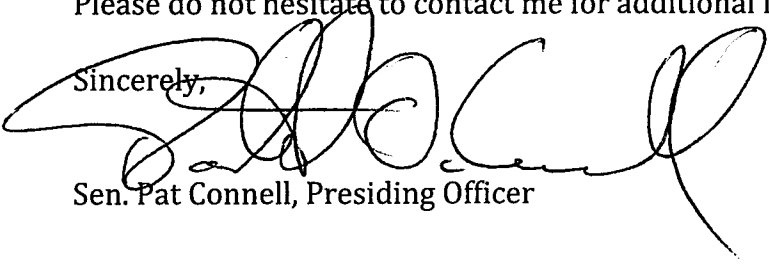
The WPIC recognizes current judicial opinion¹ that invalidated the 1993 rule defining "combined appropriation" that is currently published on the Administrative Rules of Montana website administered by the Secretary of State. In addition, the WPIC is aware that notice was provided to the public of proposed rulemaking addressing administrative changes to this rule. The WPIC respectfully requests that the Secretary of State, if possible,

¹*Clark Fork Coalition v. Tubbs*, 384 Mont. 503, 380 P. 3d 771 (Mont. 2016).

take additional measures to inform the public that the DNRC is operating under the 1987 rule, pursuant to judicial opinion, rather than the rule as it is currently published.

Please do not hesitate to contact me for additional information regarding this matter.

Sincerely,



Sen. Pat Connell, Presiding Officer

CI0099 8009ebxa.